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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th April, 2025

No. 511356-HII(2)-2025/6558.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **42/2023** dated **17.03.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PARAMJIT KAUR W/O SH. MAHINDER PAL, VILLAGE KANSAL, DISRICT S.A.S. NAGAR, MOHALI. (WORKMAN)

AND

1. ACCOUNTANT GENERAL (PRINCIPAL DIRECTOR GENERAL AUDIT CENTRE) S.C.O. NO.21-22, BACK SIDE BUS STAND, SECTOR 17-E, CHANDIGARH.
2. SECURE GUARD SECURITY & MANPOWER SERVICE, PLOT NO.151, INDUSTRIAL AREA, PHASE - II, CHANDIGARH. (MANAGEMENT)

AWARD

1. Paramjit Kaur, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.03.2015, the claimant-workman (*here-in-after 'workman'*) was appointed as MTS & Sweeper by the management of Secure Guard Security & Manpower Services - management No.2 and was deployed at the workplace of Accountant General, Sector 17-E, Chandigarh - management No.2. The workman remained in the continuous employment up to 30.08.2022, when her services were illegally & wrongly terminated by refusing of work. The workman was drawing Rs. 1000/- per month as wages at the time of termination. On 31.08.2022, workman went to attend her normal duty but she was refused work by management No.1 without assigning any reason & notice. From the date of termination, the workman was regularly visiting the management No.1 and management No.2 but the work was refused to her on one pretext or the other. The workman left with no other alternative lodged a complaint with the Labour Inspector, U.T. Chandigarh for her reinstatement. The complaint could not be

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settled at the level of Labour Inspector, U.T. Chandigarh. Refusal of work which amount to termination is retrenchment under Section 2(oo) of the ID Act. The managements have also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. There is no complaint against work & conduct of the workman from any of her colleagues and superior. Her work & conduct was appreciated by all. For her reinstatement the workman served upon the management a demand notice dated 21.12.2022. The management neither denied the contents of demand notice nor took the workman on duty. On request the intervention of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was sought but the dispute could not be settled within the stipulated period. The management No.1 only once appeared before the Conciliation Officer and thereafter started absenting himself. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages without any change in her service condition.

3. On notice, management No.1 contested the claim statement by filing written statement dated 22.11.2023 (filed on 15.12.2023) wherein preliminary objections are raised on the ground that answering respondent (*here-in-after 'management'*) is not an industry, hence the present reference deserves to be rejected. The answering management is not establishment either. The claimant (*here-in-after 'workman'*) has not approached this Court with clean hands, in as much as the period of deployment under the office of answering management as projected by the workman is vehemently denied. The workman was deployed by management No.2 in the office of answering management from May, 2021 to 30.08.2022. It is denied that services of the workman were illegally & wrongly terminated by refusing of work by the answering management. As per condition No.9 of the agreement (agreement for the period from 01.05.2021 to 30.04.2022 and 01.05.2022 to 30.04.2023) between management No.1 and management No.2, management No.2 being employer of the workman, had control over the workman / employee and not the office of management No.1. Besides, the office of management No.1 being Central Government organisation is guided by GFR, 2017 which inter-alia provides for 'Outsourcing of Service - Rule 198' which states that Ministry or Department may procure certain non-consulting services in the interest of economy & efficiency, it may prescribe detailed instruments and procedure for this purpose. Thus, hiring of non-consulting services is based on principal or economy and efficiency, refer Clause 16 of the agreement.

4. Further on merits, the workman was deployed under the answering management by management No.2 only from May, 2021 to August, 2022. The disbursement of the wages of the workman was on the part of management No.2, out of sanctioned monthly bills raised by management No.2. The deployment of workman under the answering management No.1 came to an end by virtue of terms & conditions of the agreement between the management No.1 & management No.2, coming to an end. It is denied to the extent that the answering management refused work to the workman as alleged. It is not disputed that Labour Inspector, Chandigarh took up the matter but the same was not settled. In view of the submissions made above, no charge-sheet was required to be filed against the workman nor any retrenchment compensation was to be paid to the workman on the ground of alleged violation of Section 25F of the ID Act. Rest of the contents of the claim statement are denied as wrong except para 5 & 6, which are replied in a formal manner by submitting that these paras are not replied in view of the submissions made above.

5. Management No.2 contested the claim statement by filing written statement dated 13.07.2023 (filed on 17.08.2023) wherein preliminary objection are raised on the ground that management No.2 is only a private agency in the business of outsourcing of manpower on contract basis / limited period service contract / agreement with the client / principal employer as it's service provider, where contractually deployed staff provide support services on behalf of the agency for completion of the workman assigned to him / her by the principal employer. Hence, workman cannot claim reinstatement. The workman had not reported in

writing to the office of management No.2 and chosen to stop providing services to the client of service provider. Hence, the fault lies with the workman and not that of service provider. In the present case, the workman has levelled the allegation against the Department as such there is no involvement of management No.2. Hence, claim is required to be dropped qua management No.2. The workman could not have stopped providing support service to the client (department) until asked to do so by the management No.2. Besides, the principal employer was required to intimate the service provider well in time as per provision of law / rules one month's notice is required to be given to the workman and such rules / law are mandatory requirement which are always observed between the principal employer and the service provider.

6. Further on merits, it is submitted that workman was not appointed by the management No.2 as the workman come on the pay rolls of Secure Guard Security & Manpower Service - management No.2 on 01.05.2021 by transfer of allotment of tender. It is incorrect that the workman was with the management No.2 on 31.10.2010 as claimed by her. The contents of para 2 needs no comments as it relates to management No.1. The management No.2 had not terminated the services of the workman. The workman being an outsource employee is not entitled for the retrenchment compensation as the workman had abandoned the service at her end / own level. Para 5 needs not comments as there is nothing on record. In response to demand notice served by the workman, the answering management No.2 attended the office of Assistant Labour Commissioner, Chandigarh and apprised the position orally as well as in writing vide letter No.SG/SMS/2023/813 dated 03.01.2023. There is no question of reinstatement as the workman has voluntarily abandoned the services. Prayer is made that in view of the position given above, the claim qua Secure Guard Security & Manpower may be dropped.

7. The workman filed separate rejoinder to the written statement of managements No.1 & 2 wherein the contents of respective written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 12.02.2024 :-

1. Whether the termination of the services of workman is illegal ? If so, to what effect and what relief he is entitled to ? OPW
2. Whether the management No.1 does not falls within the definition of 'industry' as defined under Section 2(j) of the ID Act ? OPM (Management No.1)
3. Whether the workman has not approached the Court with clean hands ? OPM (Management No.1)
4. Relief.

9. In evidence workman Paramjit Kaur examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 23.08.2024 Learned Representative for the workman closed evidence in affirmative.

10. On the other hand, management No.1 examined MW1 Amod Dixit - Assistant Audit Officer, Office of Principal Director of Audit (Central), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents i.e. agreement dated 03.05.2021 between the Director of Indian Audit & Accounts Department and M/s Secure Guard Security and Manpower Services for the period w.e.f. 01.5.2021 to 30.04.2022 vide Exhibit 'R1', agreement dated 01.07.2021 between the Director of Indian Audit & Accounts Department and M/s Secure Guard Security and Manpower Services for the period w.e.f. 01.05.2022 to 30.04.2023 vide Exhibit 'R2' and authority letter dated 13.11.2024 issued by Director Admin O/o Principal Director of Audit (Central), Chandigarh in his favour vide Exhibit 'R3' (documents mentioned as RW1 and RW2 in the affidavit were renumbered as Exhibit 'R1' and Exhibit 'R2' respectively).

11. In cross-examination MW1 brought on record the attendance record for the period w.e.f. August, 2022 to 30.04.2023 vide Exhibit 'R3'. Since Exhibit 'R3' is numbered twice, thus in order to avoid any ambiguity, the above attendance record is here-in-after renumbered and referred as Exhibit 'R4'.

12. On the other hand, management No.2 examined MW2 Parveen Yadav - Manager, M/s Secure Guard Security & Manpower Services, who tendered his affidavit Exhibit 'MW2/A' along with copy of reply dated 03.01.2023 to demand notice No.232/2022 under Section 2A of the ID Act, filed by Secure Guard Security and Manpower Service - management No.2 in the proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide Exhibit 'MW2/1'.

13. On 17.12.2024 Learned Representative for the management No.2 closed evidence. On 22.01.2025 Learned Representative for the management No.1 closed oral evidence. On 11.03.2025 Learned Representative for the management No.1 closed documentary evidence.

14. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 to 3 :

15. All these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

16. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 & 3 is on the management No.1.

17. In order to prove its claim workman Paramjit Kaur examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the entire contents of the claim statement which are not reproduced here for the sake of brevity.

18. On the other hand, to controvert the applicant's claim management No.1 examined MW1 Amod Dixit - Assistant Audit Officer, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement of management No.1. MW1 supported his oral version with documents Exhibit 'R1' to Exhibit 'R4'. Management No.2 examined MW2 Parveen Yadav - Manager, who vide his affidavit Exhibit 'MW2/A' deposed the entire contents of written statement of management No.2. MW2 supported his oral version with documents Exhibit 'MW2/1'. The contents of affidavit Exhibit 'MW1/A' and Exhibit 'MW2/A' are not reproduced to avoid repetition.

19. From the oral as well as documentary evidence led by the parties, following undisputed facts have emerged :-

- i) The management No.1 - Department and management No.2 - contractor entered into contract dated 03.05.2021 / Exhibit 'R1' for the period from 01.05.2021 to 30.04.2022, whereby the contractor - management No.2 has agreed to provide the outsourcing professional services for 12 months (11 MTS and 01 Driver). Thereafter management No.1 & 2 entered into another contract dated 01.07.2022 / Exhibit 'R2' for the period 01.05.2022 to 30.04.2023, whereby the contractor agreed to provide the outsourcing professional services for 12 months (11 MTS and 01 Driver). It was further agreed that the contract period may be further extended with mutual consent.
- ii) After 30.04.2023, the managements No.1 & 2 did not further extend the contract period.
- iii) In pursuance of initial contract dated 03.05.2021 / Exhibit 'R1', the management No.2 deployed the requisite number of contractual employees including the workman with office of management No.1 initially for the period w.e.f. 01.05.2021 to 30.04.2022 and thereafter

vide contract dated 01.07.2021 / Exhibit 'R2' extended the contract period further from 01.05.2022 to 30.04.2023. In this regard workman / AW1 when put to cross-examination stated that she does not know if she was appointed for the period w.e.f. May, 2021 to 30.08.2022 by the management No.2. Thus, the plea of management No.1 that the workman was appointed for the period w.e.f. May, 2021 to 30.08.2022 by the management No.2 is deemed to be admitted being not specifically denied by the workman. Moreover, it is own suggestion of the workman to MW1 in his cross-examination that the workman was deployed with the office of management No.1 on contractual basis through management No.2. In this regard, MW1 when put to cross-examination by the workman admitted as correct that the workman was deployed on contractual basis with management No.1 through management No.2. MW1 in his cross-examination conducted by management No.2 also admitted as correct that the workman was deployed with the office of Principal Director of Audit (Central), Chandigarh - management No.1 on contractual basis through outsource under the contractor Secure Guard Security and Manpower Services - management No.2 w.e.f. 01.05.2021.

- iv) The services of the workman were taken over by the contractor - management No.2 from the previous contractor. In this regard AW1 when put to cross-examination by management No.2 admitted as correct that her services were taken over from previous contractor by the management No.2 w.e.f. 01.05.2021.

20. Dispute between the parties is confined to the termination of services of the workman.

21. Learned Representative for the workman contended that on 31.08.2022, when the workman went to attend her normal duty, she was refused work by management No.1 without assigning any reason and notice, which is retrenchment under Section 2(o) of the ID Act. At the time of termination of services, the workman was neither issued prior notice, nor paid notice pay in lieu of notice period nor paid retrenchment compensation at the time of termination which is violative of Section 25F of the ID Act. At the time of termination, the contract / Exhibit 'R2' between the managements No.1 & 2 was in force. After termination, the workman regularly visited management No.1 & 2 but the work was refused to her on one pretext or other. The workman filed complaint before the Labour Inspector but the dispute could not be settled before the Labour Inspector. Thereafter, the workman raised demand notice dated 21.12.2022, in which the conciliation proceedings taken place before the Assistant Labour Commissioner-cum-Conciliation Officer but the dispute could not be settled within the stipulated period. The conciliation proceedings failed vide failure report of Assistant Labour Commissioner-cum-Conciliation Officer bearing Memo No.770 dated 14.03.2023. Thus, the workman has filed the present claim statement seeking reinstatement with continuity of service along with full back wages and consequential benefits.

22. On the other hand, Learned Representative for the management No.1 contended that first of all the management is not an 'industry' within the definition of Section 2(j) of the ID Act. The management No.1 is a department being Central Government organisation. Management No.1 is governed by GFR, 2017 and the Labour Law are not applicable to management No.1. It is further contended by Learned Representative for the management No.1 that there is no relationship of employer-employee between the management No.1 and workman. The workman was deployed with management No.1 by the contractor - management No.2 for a specific period and by now the contract period between the management No.1 & 2 has expired by efflux of time. It is further contended by Learned Representative for the management No.1 that workman has wrongfully alleged in the claim statement that she is deployed with management No.1 through the management No.2 w.e.f. 01.03.2015, whereas the contract of management No.1 with management No.2 / Exhibit 'R1' commenced from 01.05.2021. Much stress is laid upon the fact that when there is no employer-employee relationship between management No.1 & the workman, thus the question of termination of services of the

workman by the management No.1, as alleged, does not arise and there was no necessity for the management No.1 to comply with the provisions of Section 25F of the ID Act.

23. Learned Representative for the management No.2 contended that w.e.f. 01.05.2021, management No.2 after taking over the workman from the previous contractor, deployed the workman with the management No.1 w.e.f. 01.05.2021 up to 30.04.2022 on the basis of contract dated 03.05.2021 / Exhibit 'R1' and extended further the period of contract for 01.05.2022 to 31.04.2023 vide another contract dated 01.07.2021 / Exhibit 'R2'. It is further contended by Learned Representative for the management No.2 that it is clearly pleaded by the workman in claim statement that management No.1 refused work to her w.e.f. 31.08.2022 and that the workman was not allowed to resume duty by the management No.1. It is further contended by Learned Representative for the management No.2 that in case the workman was refused work w.e.f. 31.08.2022 by the management No.1, then the workman could not have stopped providing support services with the express consent of service provider. Moreover, the Department - management No.1 had not informed that management No.2 - service provider for arranging replacement of particular support staff. Workman in her cross-examination admitted that management No.2 had not taken her on job on 31.08.2022 and she did not move any application of grievance to the management No.2 to the said effect rather served demand notice after long time. The workman had not reported in writing in the Office of Secure Guard Security & Manpower Services and chosen to stop providing services to the client of the service provider - management No.1. Hence, the fault lies with the workman and not that of service provider. The services of the workman were not terminated at all by the management No.2, rather the workman had voluntarily abandoned the job assignment for her own benefit as informed by the Office of Assistant Labour Commissioner, Chandigarh vide letter No.SG/MS/2023/813 dated 03.01.2023 (Annexure 'A' in the case file). In view of the above submissions, no responsibility of management No.2 is made out and workman is not entitled to reinstatement with continuity of service along with full back wages and other consequential benefits, prayed for.

24. As far as the applicability of Labour Laws to the management No.1 is concerned, the Contract Labour (Regulation and Abolition) Act, 1970 (*here-in-after in short 'Act 1970'*) is one of the most significant labour legislations in India as the objective of the Act 1970 is to prevent exploitation of blue collars workers and ensure facilitation of better conditions of work for them. As per Section 2(1)(g) of the Act 1970, a principal employer would mean and include the Head of any Government or local Authority, the 'owner' or 'occupier' or 'manger' of factory (under the Factories Act, 1948), 'owner', 'agent' or 'manger' of a mine, or any person responsible for the supervision and control in an establishment. Establishment mean any office or department of the Government or local Authority or any place where industry, trade, business, manufacturer or occupation is being carried. As per Section 2(1)(c) of the Act 1970, a contractor would mean any person, who supplies contract labour for any work of an establishment and include a sub-contractor. Every contractor to whom the Act 1970 applies has to take licence under the Act 1970. The definition of 'workman' under the Act 1970 includes any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but excludes certain categories as such. As per Section 2(1)(b) of the Act 1970, a workman shall be deemed to be employed as 'contract labour' in or connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

25. The two Acts i.e. Act 1970 and ID Act are not mutually exclusive; they address different aspects of labour relations. The Act 1970 regulates the employment of contract labour, while the ID Act provides a mechanism for resolving disputes that may arise from that employment. Compliance with Act 1970 does not mean that the provisions of the ID Act are automatically inapplicable. Contract workers can still raise industrial dispute under the ID Act.

26. By virtue of the above provisions of the Act 1970, the management No.1 which is a Central Government organisation is covered in the definition of Section 2(1)(g) of the Act 1980, management No.2 is

covered within the definition of Section 2(1)(c) of the Act 1970 and workman is covered under the definition of Section 2(1)(b) of the Act 1970. By virtue of Section 2(1)(g) of the Act 1970, the Labour Laws including the ID Act is applicable to the management No.1 as the management No.1 has entered into service contract dated 03.05.2021 / Exhibit 'R1' (for the period from 01.05.2021 to 30.04.2022) and another service contract dated 01.07.2021 / Exhibit 'R2' (for the period w.e.f. 01.05.2022 to 30.04.2023) whereby requisition of Government Department / management No.1, the service provider - contractor / management No.2 has provided outsource contractor workers including the workman and deployed the workman at the premises of the management No.1 for the period specified in the contract. There are various terms & conditions of contract Exhibit 'R1' and Exhibit 'R2' which was agreed by both management No.1 and management No.2 at the time of executing the above contracts and thus binding on managements No.1 & 2. In Exhibit 'R1' and Exhibit 'R2', management No.1 is the first party and management No.2 is the second party. The statutory requirement as incorporated in Exhibit 'R1' and Exhibit 'R2' would show that the services of the contractual worker are under direct control & supervision of the contractor - second party. The relevant clause 9 under the Head 'Statutory Requirements' of the contract / Exhibit 'R1' and Exhibit 'R2' is reproduced as below :-

"9. For all intents and purposes, the Second Party / agency shall be the "Employer" within the meaning of different Labour Legislations in respect of manpower deployed by it. There shall be no claim by such deployed persons of any employment in First Party. The persons deployed by the Second Party in First Party shall be employees of agency all times and not have any stake or claims like employer and employee relationship against the First Party."

27. In view of the aforesaid clause of contract Exhibit 'R1' and Exhibit 'R2' the contractor - Secure Guard Security & Manpower Services - management No.2 is the employer of the contractual workers for all purpose. The GFR, 2017 are not applicable to the contractual workers deployed with management No.1 under the service contract between department - management No.1 and contractor - management No.2.

28. Now coming to the termination of services of the workman, as far as the contention raised by management No.2 that workman did not inform the contractor about the principal employer's refusal of work or termination, is concerned, it limits the contractor's ability to intervene. However, under the Labour Laws, a worker's ignorance or failure to report does not absolve the contractor of responsibility. If the contractor was unaware of termination and failed to ensure proper employment records, the contractor is liable for non-compliance with the Labour Law requirements. In this case, the workman filed a demand notice claiming illegal termination, impleading the contractor as a party, this contractor cannot deny the knowledge of termination of services. Here is the case, where the contractor - management No.2 failed to track the worker's status, thus contractor is liable for the same.

29. The contention raised by the Learned Representative for the management No.2 that workman has abandoned the job of her own carries no force as even if the workman did not report for duty without getting the leave sanctioned, the employer-contractor must issue notice to the workman requiring him / her to join duty, but no such action is taken by the management No.2. It is neither pleaded nor proved by management No.2 that it has complied with mandate of Section 25F of the ID Act as the workman remained in continuous service of management No.2 for period of more than 240 days (w.e.f. May, 2021 to 30.08.2022) in 12 calendar months preceding termination on 31.08.2022. Besides, at the time of termination of service of the workman, the contract / Exhibit 'R2' between management No.1 & 2 was in force. MW2 (witness of management No.2) when put to cross-examination by the workman stated that management No.2 received message from the Department - management No.1 that the workman has been refused work, one day prior to that. The aforesaid version of MW2 falsified the plea of management No.2 that it had no intimation from the management No.2 that workman has stopped reporting on duty or the workman has been refused work by the management No.1 w.e.f. 31.08.2022. MW2 in his cross-examination denied the suggestion as wrong that management No.2 did not took back the workman on duty in conciliation proceedings before the ALC, U.T. Chandigarh. MW2

voluntarily stated that the Department did not agree for the same. MW2 further stated that now, he is not ready to take back the workman on duty and voluntarily stated that there is no vacancy with the management No.2. MW2 further stated that the management did not give in writing to the workman that his services are meant for the Department - management No.1 only. MW2 admitted as correct that at the time of termination of services of the workman, the management No.2 had contract with other agencies - departments also.

30. Further with regard to contention raised by Learned Representative for the management No.1 that termination of services of the workman is on the basis of the expiry of their contract, which is covered under Section 2(o)(bb) of the ID Act, hence even conditions of Section 25F of the ID Act were not required to be fulfilled, the same needs to be adjudicated on the basis of factual aspects. As per the admitted facts the last contract Exhibit 'R2' between the management No.1 & 2 was for the period w.e.f. 01.05.2022 to 30.04.2023, whereas before the expiry of the said period, the services of the workman were terminated on 31.08.2022, hence, it is not the case of relieving workman on completion of the contract period by efflux of time to as to be covered under Section 2(o)(bb) of the ID Act rather the same amounts to termination.

31. In view of the discussion made above, the employer-contractor / management No.2 is proved to have violated the provisions of Section 25F of the ID Act while terminating the services of the workman w.e.f. 31.08.2022. Thus, termination of services of the workman is illegal and hereby set aside.

32. Management No.1 has failed to prove concealment of any material fact by the workman.

33. By now the last contract period of contract Exhibit 'R2' between the management No.1 & 2 has already expired and the contract is not extended further, reinstatement with the same department / management No.1 would be impractical. Keeping in view the fact & circumstances of the case, service period of the workman under management No.2 i.e. w.e.f. 01.05.2021 to 30.08.2022 and last paid monthly wages of the workman ₹ 16,500/- per month, workman is held entitled to lump sum compensation of ₹ 25,000/- to be paid by management No.2 - Secure Guard Security & Manpower Services.

34. Accordingly, issue No.1 is decided in favour of the workman and against the management No.2. Issues No.2 & 3 are decided against the management No.1 and in favour of the workman.

Relief :

35. In the view of foregoing finding on the issues above, this industrial dispute is allowed qua management No.2 - Secure Guard Security & Manpower Services to the effect that workman is held entitled to lump sum compensation of ₹ 25,000/- to be paid by management No.2. The management No.2 is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the above said amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Dated : 17.03.2025.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th April, 2025

No. 511353-HII(2)-2025/6560.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **41/2023** dated **17.03.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

KAMLA W/O SH. KAILASH PANDEY, VILLAGE KANSAL, DISRICT S.A.S. NAGAR,
MOHALI. (WORKMAN)

AND

1. ACCOUNTANT GENERAL (PRINCIPAL DIRECTOR GENERAL AUDIT CENTRE)
S.C.O. NO.21-22, BACK SIDE BUS STAND, SECTOR 17-E, CHANDIGARH.
2. SECURE GUARD SECURITY & MANPOWER SERVICE, PLOT NO.151, INDUSTRIAL
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AWARD

1. Kamla, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 30.06.2021, the claimant-workman (*here-in-after 'workman'*) was appointed as MTS & Sweeper by the management of Secure Guard Security & Manpower Services - management No.2 and was deployed at the workplace of Accountant General, Sector 17-E, Chandigarh - management No.2. The workman remained in the continuous employment up to 30.08.2022, when her services were illegally & wrongly terminated by refusing of work. The workman was drawing ₹ 16,500/- per month as wages at the time of termination. On 31.08.2022, workman went to attend her normal duty but she was refused work by management No.1 without assigning any reason & notice. From the date of termination, the workman was regularly visiting the management No.1 and management No.2 but the work was refused to her on one pretext or the other. The workman left with no other alternative lodged a complaint with the Labour Inspector, U.T. Chandigarh for her reinstatement. The complaint could not be settled at the level of Labour Inspector, U.T. Chandigarh. Refusal of work which amount to termination is retrenchment under Section 2(oo) of the ID Act. The managements have also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. There is no complaint against work & conduct of the workman from any of her colleagues and superior. Her work & conduct was appreciated by all. For her reinstatement the workman served upon the management a demand notice dated 21.12.2022. The management neither denied the contents of demand notice nor took the workman on duty. On request the intervention of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was sought but the dispute could not be settled within the stipulated period. The management No.1 only once appeared before the Conciliation Officer and thereafter started absenting himself. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages without any change in her service condition.

3. On notice, management No.1 contested the claim statement by filing written statement dated 22.11.2023 (filed on 15.12.2023) wherein preliminary objections are raised on the ground that answering respondent (*here-in-after 'management'*) is not an industry, hence the present reference deserves to be rejected. The answering management is not establishment either. The claimant (*here-in-after 'workman'*) has not approached this Court with clean hands, in as much as the period of deployment under the office of answering management as projected by the workman is vehemently denied. The workman was deployed by management No.2 in the office of answering management from November, 2021 to 30.08.2022. It is denied that services of the workman were illegally & wrongly terminated by refusing of work by the answering management. As per condition No.9 of the agreement (agreement for the period from 01.05.2021 to 30.04.2022 and 01.05.2022 to 30.04.2023) between management No.1 and management No.2, management No.2 being employer of the workman, had control over the workman / employee and not the office of management No.1. Besides, the office of management No.1 being Central Government organisation is guided by GFR, 2017 which inter-alia provides for 'Outsourcing of Service - Rule 198' which states that Ministry or Department may procure certain non-consulting services in the interest of economy & efficiency, it may prescribe detailed instruments and procedure for this purpose. Thus, hiring of non-consulting services is based on principal or economy and efficiency, refer Clause 16 of the agreement.

4. Further on merits, the workman was deployed under the answering management by management No.2 only from 30.06.2021 to 30.08.2022. The disbursement of the wages of the workman was on the part of management No.2, out of sanctioned monthly bills raised by management No.2. The deployment of workman under the answering management No.1 came to an end by virtue of terms & conditions of the agreement between the management No.1 & management No.2, coming to an end. It is denied to the extent that the answering management refused work to the workman as alleged. It is not disputed that Labour Inspector, Chandigarh took up the matter but the same was not settled. In view of the submissions made above, no charge-sheet was required to be filed against the workman nor any retrenchment compensation was to be paid to the workman on the ground of alleged violation of Section 25F of the ID Act. Rest of the contents of the claim statement are denied as wrong except para 5 & 6, which are replied in a formal manner by submitting that these paras are not replied in view of the submissions made above.

5. Management No.2 contested the claim statement by filing written statement dated 13.07.2023 (filed on 17.08.2023) wherein preliminary objection are raised on the ground that management No.2 is only a private agency in the business of outsourcing of manpower on contract basis / limited period service contract / agreement with the client / principal employer as it's service provider, where contractually deployed staff provide support services on behalf of the agency for completion of the workman assigned to him / her by the principal employer. Hence, workman cannot claim reinstatement. The workman had not reported in writing to the office of management No.2 and chosen to stop providing services to the client of service provider. Hence, the fault lies with the workman and not that of service provider. In the present case, the workman has levelled the allegation against the Department as such there is no involvement of management No.2. Hence, claim is required to be dropped qua management No.2. The workman could not have stopped providing support service to the client (department) until asked to do so by the management No.2. Besides, the principal employer was required to intimate the service provider well in time as per provision of law / rules one month's notice is required to be given to the workman and such rules / law are mandatory requirement which are always observed between the principal employer and the service provider.

6. Further on merits, it is submitted that workman was not appointed by the management No.2 as the workman come on the pay rolls of Secure Guard Security & Manpower Service - management No.2 on 01.05.2021 by transfer of allotment of tender. It is incorrect that the workman was with the management No.2 on 31.10.2010 as claimed by her. The contents of para 2 needs no comments as it relates to management No.1. The management No.2 had not terminated the services of the workman. The workman being an outsource

employee is not entitled for the retrenchment compensation as the workman had abandoned the service at her end / own level. Para 5 needs not comments as there is nothing on record. In response to demand notice served by the workman, the answering management No.2 attended the office of Assistant Labour Commissioner, Chandigarh and apprised the position orally as well as in writing vide letter No.SG/SMS/2023/810 dated 03.01.2023. There is no question of reinstatement as the workman has voluntarily abandoned the services. Prayer is made that in view of the position given above, the claim qua Secure Guard Security & Manpower may be dropped.

7. The workman filed separate rejoinder to the written statement of managements No.1 & 2 wherein the contents of respective written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 12.02.2024 :-

1. Whether the termination of the services of workman is illegal ? If so, to what effect and what relief he is entitled to ? OPW
2. Whether the management No.1 does not falls within the definition of 'industry' as defined under Section 2(j) of the ID Act ? OPM (Management No.1)
3. Whether the workman has not approached the Court with clean hands ? OPM (Management No.1)
4. Relief.

9. In evidence workman Kamla examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 23.08.2024 Learned Representative for the workman closed evidence in affirmative.

10. On the other hand, management No.1 examined MW1 Amod Dixit - Assistant Audit Officer, Office of Principal Director of Audit (Central), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents i.e. agreement dated 03.05.2021 between the Director of Indian Audit & Accounts Department and M/s Secure Guard Security and Manpower Services for the period w.e.f. 01.5.2021 to 30.04.2022 vide Exhibit 'R1', agreement dated 01.07.2021 between the Director of Indian Audit & Accounts Department and M/s Secure Guard Security and Manpower Services for the period w.e.f. 01.05.2022 to 30.04.2023 vide Exhibit 'R2' and authority letter dated 13.11.2024 issued by Director Admin O/o Principal Director of Audit (Central), Chandigarh in his favour vide Exhibit 'R3' (documents mentioned as RW1 and RW2 in the affidavit were renumbered as Exhibit 'R1' and Exhibit 'R2' respectively.

11. In cross-examination MW1 brought on record the attendance record for the period w.e.f. August, 2022 to 30.04.2023 vide Exhibit 'R3'. Since Exhibit 'R3' is numbered twice, thus in order to avoid any ambiguity, the above attendance record is here-in-after renumbered and referred as Exhibit 'R4'.

12. On the other hand, management No.2 examined MW2 Parveen Yadav - Manager, M/s Secure Guard Security & Manpower Services, who tendered his affidavit Exhibit 'MW2/A' along with copy of reply dated 03.01.2023 to demand notice No.232/2022 under Section 2A of the ID Act, filed by Secure Guard Security and Manpower Service - management No.2 in the proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide Exhibit 'MW2/1'.

13. On 17.12.2024 Learned Representative for the management No.2 closed evidence. On 22.01.2025 Learned Representative for the management No.1 closed oral evidence. On 11.03.2025 Learned Representative for the management No.1 closed documentary evidence.

14. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 to 3 :

15. All these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

16. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 & 3 is on the management No.1.

17. In order to prove its claim workman Kamla examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the entire contents of the claim statement which are not reproduced here for the sake of brevity.

18. On the other hand, to controvert the applicant's claim management No.1 examined MW1 Amod Dixit - Assistant Audit Officer, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement of management No.1. MW1 supported his oral version with documents Exhibit 'R1' to Exhibit 'R4'. Management No.2 examined MW2 Parveen Yadav - Manager, who vide his affidavit Exhibit 'MW2/A' deposed the entire contents of written statement of management No.2. MW2 supported his oral version with documents Exhibit 'MW2/1'. The contents of affidavit Exhibit 'MW1/A' and Exhibit 'MW2/A' are not reproduced to avoid repetition.

19. From the oral as well as documentary evidence led by the parties, following undisputed facts have emerged :-

- i) The management No.1 - Department and management No.2 - contractor entered into contract dated 03.05.2021 / Exhibit 'R1' for the period from 01.05.2021 to 30.04.2022, whereby the contractor - management No.2 has agreed to provide the outsourcing professional services for 12 months (11 MTS and 01 Driver). Thereafter management No.1 & 2 entered into another contract dated 01.07.2022 / Exhibit 'R2' for the period 01.05.2022 to 30.04.2023, whereby the contractor agreed to provide the outsourcing professional services for 12 months (11 MTS and 01 Driver). It was further agreed that the contract period may be further extended with mutual consent.
- ii) After 30.04.2023, the managements No.1 & 2 did not further extend the contract period.
- iii) In pursuance of initial contract dated 03.05.2021 / Exhibit 'R1', the management No.2 deployed the requisite number of contractual employees including the workman with office of management No.1 initially for the period w.e.f. 01.05.2021 to 30.04.2022 and thereafter vide contract dated 01.07.2021 / Exhibit 'R2' extended the contract period further from 01.05.2022 to 30.04.2023. In this regard though AW1 in her cross-examination conducted by management No.1, admitted as correct that she was appointed for the period from May, 2021 to 30.08.2022 by the management No.2 but it is own case of the workman in her demand notice as well statement of claim that she was appointed on 30.06.2021. Thus, the date of appointment of the workman will be taken as 30.06.2021.
- iv) The services of the workman were taken over by the contractor - management No.2 from the previous contractor. In this regard AW1 when put to cross-examination by management No.2 admitted as correct that her services were taken over from previous contractor by the management No.2 w.e.f. 01.05.2021.

20. Dispute between the parties is confined to the termination of services of the workman.

21. Learned Representative for the workman contended that on 31.08.2022, when the workman went to attend her normal duty, she was refused work by management No.1 without assigning any

reason and notice, which is retrenchment under Section 2(oo) of the ID Act. At the time of termination of services, the workman was neither issued prior notice, nor paid notice pay in lieu of notice period nor paid retrenchment compensation at the time of termination which is violative of Section 25F of the ID Act. At the time of termination, the contract / Exhibit 'R2' between the managements No.1 & 2 was in force. After termination, the workman regularly visited management No.1 & 2 but the work was refused to her on one pretext or other. The workman filed complaint before the Labour Inspector but the dispute could not be settled before the Labour Inspector. Thereafter, the workman raised demand notice dated 21.12.2022, in which the conciliation proceedings taken place before the Assistant Labour Commissioner-cum-Conciliation Officer but the dispute could not be settled within the stipulated period. The conciliation proceedings failed vide failure report of Assistant Labour Commissioner-cum-Conciliation Officer bearing Memo No.774 dated 14.03.2023. Thus, the workman has filed the present claim statement seeking reinstatement with continuity of service along with full back wages and consequential benefits.

22. On the other hand, Learned Representative for the management No.1 contended that first of all the management is not an 'industry' within the definition of Section 2(j) of the ID Act. The management No.1 is a department being Central Government organisation. Management No.1 is governed by GFR, 2017 and the Labour Law are not applicable to management No.1. It is further contended by Learned Representative for the management No.1 that there is no relationship of employer-employee between the management No.1 and workman. The workman was deployed with management No.1 by the contractor - management No.2 for a specific period and by now the contract period between the management No.1 & 2 has expired by efflux of time. It is further contended by Learned Representative for the management No.1 that workman has wrongfully alleged in the claim statement that she is deployed with management No.1 through the management No.2 w.e.f. 30.06.2021, whereas the contract of management No.1 with management No.2 / Exhibit 'R1' commenced from 01.05.2021. Much stress is laid upon the fact that when there is no employer-employee relationship between management No.1 & the workman, thus the question of termination of services of the workman by the management No.1, as alleged, does not arise and there was no necessity for the management No.1 to comply with the provisions of Section 25F of the ID Act.

23. Learned Representative for the management No.2 contended that w.e.f. 01.05.2021, management No.2 after taking over the workman from the previous contractor, deployed the workman with the management No.1 w.e.f. 30.06.2021 up to 30.04.2022 on the basis of contract dated 03.05.2021 / Exhibit 'R1' and extended further the period of contract for 01.05.2022 to 31.04.2023 vide another contract dated 01.07.2021 / Exhibit 'R2'. It is further contended by Learned Representative for the management No.2 that it is clearly pleaded by the workman in claim statement that management No.1 refused work to her w.e.f. 31.08.2022 and that the workman was not allowed to resume duty by the management No.1. It is further contended by Learned Representative for the management No.2 that in case the workman was refused work w.e.f. 31.08.2022 by the management No.1, then the workman could not have stopped providing support services with the express consent of service provider. Moreover, the Department - management No.1 had not informed that management No.2 - service provider for arranging replacement of particular support staff. Workman in her cross-examination admitted that management No.2 had not taken her on job on 31.08.2022 and she did not move any application of grievance to the management No.2 to the said effect rather served demand notice after long time. The workman had not reported in writing in the Office of Secure Guard Security & Manpower Services and chosen to stop providing services to the client of the service provider - management No.1. Hence, the fault lies with the workman and not that of service provider. The services of the workman were not terminated at all by the management No.2, rather the workman had voluntarily abandoned the job assignment for her own benefit as informed by the Office of Assistant Labour Commissioner, Chandigarh vide letter No.SG/MS/2023/810 dated 03.01.2023 (Annexure 'A' in the case file). In view of the above submissions, no responsibility of management No.2 is made out and workman is not entitled to reinstatement with continuity of service along with full back wages and other consequential benefits, prayed for.

24. As far as the applicability of Labour Laws to the management No.1 is concerned, the Contract Labour (Regulation and Abolition) Act, 1970 (*here-in-after in short 'Act 1970'*) is one of the most significant labour legislations in India as the objective of the Act 1970 is to prevent exploitation of blue collars workers and ensure facilitation of better conditions of work for them. As per Section 2(1)(g) of the Act 1970, a principal employer would mean and include the Head of any Government or local Authority, the 'owner' or 'occupier' or 'manger' of factory (under the Factories Act, 1948), 'owner', 'agent' or 'manger' of a mine, or any person responsible for the supervision and control in an establishment. Establishment mean any office or department of the Government or local Authority or any place where industry, trade, business, manufacturer or occupation is being carried. As per Section 2(1)(c) of the Act 1970, a contractor would mean any person, who supplies contract labour for any work of an establishment and include a sub-contractor. Every contractor to whom the Act 1970 applies has to take licence under the Act 1970. The definition of 'workman' under the Act 1970 includes any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but excludes certain categories as such. As per Section 2(1)(b) of the Act 1970, a workman shall be deemed to be employed as 'contract labour' in or connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

25. The two Acts i.e. Act 1970 and ID Act are not mutually exclusive; they address different aspects of labour relations. The Act 1970 regulates the employment of contract labour, while the ID Act provides a mechanism for resolving disputes that may arise from that employment. Compliance with Act 1970 does not mean that the provisions of the ID Act are automatically inapplicable. Contract workers can still raise industrial dispute under the ID Act.

26. By virtue of the above provisions of the Act 1970, the management No.1 which is a Central Government organisation is covered in the definition of Section 2(1)(g) of the Act 1980, management No.2 is covered within the definition of Section 2(1)(c) of the Act 1970 and workman is covered under the definition of Section 2(1)(b) of the Act 1970. By virtue of Section 2(1)(g) of the Act 1970, the Labour Laws including the ID Act is applicable to the management No.1 as the management No.1 has entered into service contract dated 03.05.2021 / Exhibit 'R1' (for the period from 01.05.2021 to 30.04.2022) and another service contract dated 01.07.2021 / Exhibit 'R2' (for the period w.e.f. 01.05.2022 to 30.04.2023) whereby requisition of Government Department / management No.1, the service provider - contractor / management No.2 has provided outsource contractor workers including the workman and deployed the workman at the premises of the management No.1 for the period specified in the contract. There are various terms & conditions of contract Exhibit 'R1' and Exhibit 'R2' which was agreed by both management No.1 and management No.2 at the time of executing the above contracts and thus binding on managements No.1 & 2. In Exhibit 'R1' and Exhibit 'R2', management No.1 is the first party and management No.2 is the second party. The statutory requirement as incorporated in Exhibit 'R1' and Exhibit 'R2' would show that the services of the contractual worker are under direct control & supervision of the contractor - second party. The relevant clause 9 under the Head 'Statutory Requirements' of the contract / Exhibit 'R1' and Exhibit 'R2' is reproduced as below :-

"9. For all intents and purposes, the Second Party / agency shall be the "Employer" within the meaning of different Labour Legislations in respect of manpower deployed by it. There shall be no claim by such deployed persons of any employment in First Party. The persons deployed by the Second Party in First Party shall be employees of agency all times and not have any stake or claims like employer and employee relationship against the First Party."

27. In view of the aforesaid clause of contract Exhibit 'R1' and Exhibit 'R2' the contractor - Secure Guard Security & Manpower Services - management No.2 is the employer of the contractual workers

for all purpose. The GFR, 2017 are not applicable to the contractual workers deployed with management No.1 under the service contract between department - management No.1 and contractor - management No.2.

28. Now coming to the termination of services of the workman, as far as the contention raised by management No.2 that workman did not inform the contractor about the principal employer's refusal of work or termination, is concerned, it limits the contractor's ability to intervene. However, under the Labour Laws, a worker's ignorance or failure to report does not absolve the contractor of responsibility. If the contractor was unaware of termination and failed to ensure proper employment records, the contractor is liable for non-compliance with the Labour Law requirements. In this case, the workman filed a demand notice claiming illegal termination, impleading the contractor as a party, this contractor cannot deny the knowledge of termination of services. Here is the case, where the contractor - management No.2 failed to track the worker's status, thus contractor is liable for the same.

29. The contention raised by the Learned Representative for the management No.2 that workman has abandoned the job of her own carries no force as even if the workman did not report for duty without getting the leave sanctioned, the employer-contractor must issue notice to the workman requiring him / her to join duty, but no such action is taken by the management No.2. It is neither pleaded nor proved by management No.2 that it has complied with mandate of Section 25F of the ID Act as the workman remained in continuous service of management No.2 for period of more than 240 days (w.e.f. 30.06.2021 to 30.08.2022) in 12 calendar months preceding termination on 31.08.2022. Besides, at the time of termination of service of the workman, the contract / Exhibit 'R2' between management No.1 & 2 was in force. MW2 (witness of management No.2) when put to cross-examination by the workman stated that management No.2 received message from the Department - management No.1 that the workman has been refused work, one day prior to that. The aforesaid version of MW2 falsified the plea of management No.2 that it had no intimation from the management No.2 that workman has stopped reporting on duty or the workman has been refused work by the management No.1 w.e.f. 31.08.2022. MW2 in his cross-examination denied the suggestion as wrong that management No.2 did not took back the workman on duty in conciliation proceedings before the ALC, U.T. Chandigarh. MW2 voluntarily stated that the Department did not agree for the same. MW2 further stated that now, he is not ready to take back the workman on duty and voluntarily stated that there is no vacancy with the management No.2. MW2 further stated that the management did not give in writing to the workman that his services are meant for the Department - management No.1 only. MW2 admitted as correct that at the time of termination of services of the workman, the management No.2 had contract with other agencies - departments also.

30. Further with regard to contention raised by Learned Representative for the management No.1 that termination of services of the workman is on the basis of the expiry of their contract, which is covered under Section 2(o)(bb) of the ID Act, hence even conditions of Section 25F of the ID Act were not required to be fulfilled, the same needs to be adjudicated on the basis of factual aspects. As per the admitted facts the last contract Exhibit 'R2' between the management No.1 & 2 was for the period w.e.f. 01.05.2022 to 30.04.2023, whereas before the expiry of the said period, the services of the workman were terminated on 31.08.2022, hence, it is not the case of relieving workman on completion of the contract period by efflux of time to as to be covered under Section 2(o)(bb) of the ID Act rather the same amounts to termination.

31. In view of the discussion made above, the employer-contractor / management No.2 is proved to have violated the provisions of Section 25F of the ID Act while terminating the services of the workman w.e.f. 31.08.2022. Thus, termination of services of the workman is illegal and hereby set aside.

32. Management No.1 has failed to prove concealment of any material fact by the workman.

33. By now the last contract period of contract Exhibit 'R2' between the management No.1 & 2 has already expired and the contract is not extended further, reinstatement with the same department / management No.1 would be impractical. Keeping in view the fact & circumstances of the case, service period of the workman under management No.2 i.e. w.e.f. 30.06.2021 to 30.08.2022 and last paid monthly wages of the

workman ` 16,500/- per month, workman is held entitled to lump sum compensation of ` 25,000/- to be paid by management No.2 - Secure Guard Security & Manpower Services.

34. Accordingly, issue No.1 is decided in favour of the workman and against the management No.2. Issues No.2 & 3 are decided against the management No.1 and in favour of the workman.

Relief :

35. In the view of foregoing finding on the issues above, this industrial dispute is allowed qua management No.2 - Secure Guard Security & Manpower Services to the effect that workman is held entitled to lump sum compensation of ` 25,000/- to be paid by management No.2. The management No.2 is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the above said amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Dated : 17.03.2025.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th April, 2025

No. 511362-HII(2)-2025/6548.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **7/2024** dated **13.03.2025** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHIV SHANKER, H.NO. 363, HALLOMAJRA, U.T. CHANDIGARH. (WORKMAN)

AND

M/S LUXMI ENTERPRISES, PLOT NO. 435, INDUSTRIAL AREA, PHASE - II, RAM DARBAR, CHANDIGARH THROUGH ITS PROPRIETOR. (MANAGEMENT)

AWARD

1. Shiv Shankar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman (*here-in-after 'workman'*) was appointed by the management in the month of November, 2018. Later on, in the month of April, 2022 the factory was shifted to Plot No.338, Industrial Area, Phase - I, Ram Darbar, Chandigarh. The workman along with other workers of the factory was shifted to the above said plot with continuity of service & all benefits intact. Again, the management has shifted the factory at Plot No.435, Phase - II, Industrial Area, Chandigarh. The workman was drawing *(the amount not mentioned in the claim statement and the column is left blank)* as wages per month. It is further averred that workman was on authorised leave from 19.12.2022 to 24.12.2022, 25.12.2022 being Sunday the off day, the workman reported for duty on 26.12.2022, but he was refused work without assigning any reason & notice. Since his termination, the workman has been regularly visiting the factory but the work was denied to him on one pretext or the other. Workman was left with no other alternative but to lodge a complaint dated 24.01.2023 with the Labour Inspector, U.T. Chandigarh. On 3rd date of hearing i.e. 27.03.2023 the management appeared before the Labour Inspector, U.T. Chandigarh along with his landlord and an Advocate and stated that the management is ready to take the workman back on job without back wages and afresh. The workman agreed to join his duties with immediate effect with continuity of service and full back wages as his services were illegally & wrongly terminated and the management had made this statement at a very belated stage, but the management refused to accept the offer of the workman. The statement of the management before the Labour Inspector was not voluntarily but after thought on the advice of his Advocate. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The management has also not paid bonus to the workman from the date of appointment to the date of termination. For his reinstatement workman served upon the management a demand notice dated 29.12.2020. The management neither denied the contents of demand notice nor took the workman back on duty. On request the Assistant Labour Commissioner-cum-Conciliation Officer intervened but the dispute could not be settled within the stipulated time. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, the management contested the claim statement by filing written statement dated 09.05.2024 wherein preliminary objections are raised to the effect that demand notice is not maintainable in the present form. While filing the demand notice, the workman has concealed the material facts. Besides, workman has no cause of action as he himself left the job.

4. Further on merits, it is stated that the workman was appointed as Helper on 01.11.2021. On 11.11.2021, the workman has gone to his village without seeking the leave and without intimation to the management. Thereafter, he again come on 07.01.2022 and joined his services by making lame excuses. The management has kept him in job on humanitarian grounds. The workman again left the job after 28.02.2022 without any intimation and without any leave from the management. The workman has left his services by his own. The complaint dated 24.01.2023 with the Labour Inspector was false. The workman was getting ` 11,622/- per month as wages. The work place as alleged in the claim statement is admitted. It is further admitted to the extent of offering the job to the workman as fresher. It is further stated that workman never reported for his job. The services of the workman were not terminated by the management. The workman has already received all the benefits and nothing is due. The workman did not turn up for his job after 28.02.2022, as such no inquiry has to be held against him. The workman is not entitled for any back wages or compensation. Management is running a small concern and is having two workers only. The establishment has only 2 machines to work and there is no need of any worker at this stage. The workman is gainfully employed and earning handsome amount for his livelihood. The workman is not entitled for any re-instatement with continuity of service and back wages.

5. The workman filed rejoinder dated 03.06.2024 wherein the contents of written statement except the admitted facts are denied as wrong and averments of the claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 03.06.2024 :-

1. Whether the termination of the services of workman is illegal ? If so, to what effect and to what relief he is entitled to ? OPW
2. Whether the workman has no cause of action ? OPM
3. Whether the claim statement is not maintainable ? OPM
4. Relief.

7. In evidence, workman Shiv Shankar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 10.12.2024, Learned Representative for the workman closed evidence of the workman in affirmative.

8. On the other hand, the management examined MW1 Baidya Nath Goswami - Proprietor of M/s Laxmi Enterprises, who tendered his affidavit Exhibit 'MW1/A'.

9. On 07.03.2025 Learned Representative for the management closed evidence.

10. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 :

11. Onus to prove this issue is on the workman.

12. Under this issue the workman Shiv Shankar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. It is penitent to mention here that in the claim statement and rejoinder the workman did not mention the amount of his last drawn monthly wages and left the relevant column blank. It is for the first time that workman in his affidavit Exhibit 'AW1/A' mentioned that he was drawing wages ` 11,622/- per month at the time of termination.

13. On the other hand, the management examined MW1 Baidya Nath Goswami - Proprietor of M/s Laxmi Enterprises vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement which are not reproduced here to avoid repetition.

14. Learned Representative for the workman argued that the workman was appointed by the management in November, 2018 and he remained in the continuous employment up to 25.12.2022. During the said period of employment workman remained on authorised leave from 19.12.2022 to 24.12.2022 and dated 25.12.2022 was off day being Sunday.

15. On the other hand, Learned Representative for the management argued that workman was appointed as Helper on 01.11.2021. On 11.02.2021 workman left the job and went to his native village without informing the management and without getting the leave sanctioned. Thereafter, workman joined on 07.01.2022 and again left the job w.e.f. 28.02.2022 without any intimation to the management.

16. The exact service period of a 'workman' can be ascertained from his appointment letter, wage register, attendance register, leave register / record. In the present case MW1 - Proprietor of M/s Luxmi Enterprises when put to cross-examination that the management does not issue appointment letter to its workman / employees. The management-firm has not maintained the Adult register. No register of attendance and payment of wages is maintained. No ledger, cash book, account book is maintained. The management does not give benefit of bonus to its employer. MW1 further stated that the management firm is registered under the Factories Act. Due to non-maintenance of record i.e. attendance, wages, leave, accounts book and non-issuance of appointment letter, adverse inference is drawn against the management. Therefore, the management's plea that workman absented from duty w.e.f. 28.02.2022 without getting the leave sanctioned and without informing the management cannot be trusted. At the same time in the absence of service record including the leave record, which employer-management is bound to maintain, there is no reason to disbelieve the workman's plea that he remained in continuous employment of the management w.e.f. November, 2019 up to 24.12.2022 with sanctioned leave from 19.12.2022 to 24.12.2022. The workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination. (Services of the workman being terminated on 25.12.2022). Thus, workman falls within the definition of 'continuous service' as defined under Section 25B of the ID Act. Once the workman fulfills the requirement of Section 25B of the ID Act, the employer is bound to follow the mandate of Section 25F of the ID Act, which lays down certain conditions which are mandatory to be complied with before retrenchment of services of the workmen. In this case, the management in para 4 on merits of the written statement pleaded that the workman did not turn up after 28.02.2022, as such no inquiry has to be held against him. It is further pleaded that the workman is not entitled for any back wages or compensation. The aforesaid plea of the management would suggest that the management did not comply with the provisions of Section 25F of the ID Act. If for the sake of argument, it is assumed that workman absented from duty w.e.f. 28.02.2022, in that situation also, at the most it amounts to misconduct and therefore, management was required to issue notice to the workman requiring him to re-join duty, but no such action is taken by the management. Thus, the services of the workman are proved to have been illegally terminated w.e.f. 25.12.2022 by the management in violation of Section 25F of the ID Act. Undisputedly, the last paid monthly wages of the workman were ` 11,622/-. Above all MW1 in his cross-examination stated that he is ready to reinstate the workman with continuity of service along with full back wages. Consequently, the workman is held entitled to reinstatement with continuity of service and full back wages.

17. Accordingly, this issue is decided in favour of the workman and against the management.

Issues No. 2 & 3 :

18. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

19. Onus to prove both these issues is on the management.

20. In this case, the workman on being aggrieved from the illegal termination of his services, filed a complaint before the Labour Inspector, U.T. Chandigarh. MW1 in his cross-examination admitted as correct that workman Shiv Shankar had filed a complaint before the Labour Inspector, U.T. Chandigarh. MW1 further admitted as correct that he appeared in the said complaint. MW1 denied the suggestion as wrong that before

Labour Inspector, he offered to give fresh employment to the workman without benefit of continuity of service and back wages. The aforesaid denial by the management is in contradiction to his own plea taken in the written statement. In para 3 on merits of written statement, it is pleaded that that 'contents of para 3 of claim are admitted to the extent of offering the job to the workman as fresher'. Further to seek reinstatement workman raised demand notice challenging the termination of his service as illegal and seek reinstatement with continuity of service and full back wages. The workman's plea that in the conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh no settlement could be arrived within the stipulated period stands substantiated from the failure report of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh bearing Memo No.244 dated 01.12.2024, vide which the workman has been advised to approach the appropriate forum for the adjudication of his dispute. Thus, the workman was left with no other option then to file claim statement under Section 2A(2) of the ID Act before this Industrial Tribunal & Labour Court. Thus, the workman has a valid cause of action. The management firm was initially operating from plot No.435, Industrial Area, Phase - II, U.T. Chandigarh the shifted to Plot No.338, Industrial Area, Phase - I, Chandigarh and again shifted to Plot No.435, Industrial Area, Phase - II, U.T. Chandigarh along with all its workers and machinery. This fact is admitted by MW1 in his cross-examination where he stated that it is correct that in April, 2022 he has shifted the management factory to plot No.338, Industrial Area, Phase - I, Ram Darbar, U.T. Chandigarh. He has taken his workers already working in the factory from Plot No.435, Phase - II, Ram Darbar Chandigarh to Plot No.338 above. MW1 further admitted as correct that from Plot No.338, he again shifted the factory of Plot No.435, Industrial Area, Phase - II, Ram Darbar, Chandigarh. MW1 admitted as correct that worker of the management factory remained in continuous employment of the management irrespective of shifting of factory from one plot to another. Since the management factory exists and operates in the territory of U.T. Chandigarh wherein the workman was employed, thus, this Industrial Tribunal & Labour Court is well within the territorial jurisdiction to try & decided the present case. I do not find any defect so far as maintainability of the present claim is concerned.

21. Accordingly, both these issues are decided against the management and in favour of the workman.

Relief :

22. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service and full back wages. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Dated : 13.03.2025.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, R. K. Goel S/o Shri C.P. Goel R/o # 5657, Sector 38-West, Chandigarh, have changed my name from R.K. Goel to Rajendra Kumar Goel.

[676-1]

I, Sumit Thukral S/o Surinder Kumar R/o Flat No. 148/1, Sector 45-A, Chandigarh, have changed my minor son's name from Parinay Thukral to Purav Thukral. Concerned note.

[677-1]

I, Rajna Devi W/o Sonu # 2067-C, Small Flats Dhanas, Chandigarh, have changed my name to Ranjana.

[678-1]

I, Vinay Kumar S/o Ram Parkash Korotania # 22/1, Bank Colony, Manimajra, Chandigarh, have changed my name to Vinay Korotania.

[679-1]

I, Kaushlender S/o Sachchu R/o # 293, Pipliwala Town, Manimajra, Chandigarh, declare that I have changed my name from Kaushlender to Kaushlender Pandey.

[680-1]

I, Vijay Kumar S/o Sunil Kumar R/o # 1173, Sector 56, Chandigarh, I have changed my name from Vijay Kumar to Vijay Mittal.

[681-1]

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[682-1]

I, Pankaj Kumar S/o Hukam Chand # 188-A, Sector 51-A, Chandigarh, have changed the name of my minor son from Tanmay to Tanmay Pant.

[683-1]

I, Samir S/o Rajman Rasali R/o House No. 1727, Sector 33-D, Chandigarh, have changed my name from Samir to Samir Rasali.

[684-1]

I, Sujauddin Malik S/o Shokat Ali Mallik R/o House No. 696, Dadu Majra Colony, Sector 38-West, Chandigarh, U.T., I have changed the spelling of my name / surname as Sujauddin Mallik instead of Sujauddin Malik. All concerned please note.

[685-1]

I, Satinder Singh S/o Inder Singh Khosla R/o 2168, Sector 44-C, Chandigarh, have changed my name from Satinder Singh to Satinder Singh Khosla.

[686-1]

I, Rajesh S/o Sh. Din Bandhu R/o House No. 51-C, Hallomajra UT, Chandigarh, have changed my name to Rajesh Rai.

[687-1]

I, Shalu Kumari W/o Rajesh R/o House No. 51-C, Hallomajra UT, Chandigarh, have changed my name to Shalu Rai.

[688-1]

I, Nirupa Marwaha D/o Sh. Baburam Marwaha R/o # 120, Sector 11-A, Chandigarh, declare that :- My maiden name was Nirupa Marwaha and after marriage with Mr. R.N. Kakar my married name was Nirupa kakar and after Divorce I have changed my name from Nirupa kakar back to my maiden name Nirupa Marwaha as per my PAN No. ABOPM0991R & Aadhar Card No. 254211291794.

[689-1]

I, Amit Seli S/o Brijender Paul Seli R/o # 1745, Pushpak Society, Sector 49-B, Chandigarh, have changed my minor girl name from Dhaanya Seli to Sai Shreya Seli.

[690-1]

I, Ashish S/o Dinesh Chander # 1053, Housing Board Colony Dhanas, Chandigarh, have changed my name to Ashish Jadli.

[691-1]

PUBLIC NOTICE

I, Anjana W/o Avtar Singh R/o # 361, Khudda Lahora, Chandigarh, is hereby declare that in my Son's academic certificate my name wrongly written as Anju Rawat instead of Anjana and my husband's name also wrongly written as Avtar Singh Rawat instead of Avtar Singh. My correct name may be treated as Anjana and my husband name as Avtar Singh.

[692-1]

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